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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,449	01/27/2006	Leszek Cwiklinski	BASF10116	5476
45473 7590 06/06/2007 HUTCHISON LAW GROUP PLLC PO BOX 31686 RALEIGH, NC 27612			EXAMINER ROWAN, KURT C	
			ART UNIT 3643	PAPER NUMBER
			MAIL DATE 06/06/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/566,449	Applicant(s) CWIKLINSKI ET AL.	
	Examiner Kurt Rowan	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-43 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9/6/2006</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the side walls of the pyramid ending with an apron which is partially buried in the ground must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 13, 18, 19, 21, 41, 42, 43 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 19531981 A1.

The DE '1981 patent shows an insect trap having a catching part with an outlet opening and a container for storing caught pests connected to a device. DE '1981 shows a catching part 1 with an outlet opening 2, a container 6, and a device 5 for separating the captured pests from water and small debris. DE '1981 discloses a net attached to the top area of the funnel. In reference to claim 13, the funnel can be considered as a reducer. In reference to claim 19, DE '1981 shows a catching part 1 having a roof 2 with or containing an opening for bag 4. In reference to claim 41, DE '1981 shows using a trap having a catching part, and a container for storing the captured insects with a device for separating the captured insects from water and small debris being placed along a path which caught insects move. The trap is hung with a bottom of the container for storing caught insects in a horizontal position.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4-5, 6-7, 8, 9, 11, 12, 14, 17, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 19531981 A1.

The DE '1981 patent has been discussed above. In reference to claim 14, DE 1981 discloses a mesh attached in the top area of the funnel, but it would have been obvious to place the mesh in openings made in the sloping walls of the funnel or reducer since the function is the same and no showing of unexpected results was made. In reference to claim 17, DE '1981 does not disclose that the container for storing caught pest is made from transparent material, but it would have been obvious to employ a container made from transparent material to determine how many insects have been trapped.

The examiner takes Official Notice that transparent containers for trapping insects are well known in the art. In reference to claim 20, DE '1981 does not disclose making the mesh from hydrophobic material, but it would have been obvious to make the mesh from hydrophobic material so that water would not be attracted to it and directly pass by. In reference to claim 22, DE '1981 shows the catching part in the shape of a container, opened at the top, but not narrowing towards the bottom. DE '1981 shows the catching part being provided with a lower part forming a directing device. However, it would have been obvious to narrow the catching part towards the bottom to direct insects into the directing device noting that changes in shape have been held to be obvious. See In re Dailey et al., 149 USPQ 47. In reference to claim 26, DE '1981 does not show an outer

element of the catching part having the shape of a pyramid having an opening at the top, but it would have been obvious to employ a pyramid shape since the shape is a matter of design choice absent a showing of unexpected results. See *In re Rose*, 105 USPQ 137, *In re Aller et al.*, 105 USPQ 233 and *In re Dailey et al.*, 149 USPQ 47. In reference to claim 32, DE '1981 does not show the catching part of the container in the shape of a truncated wedge, but it would have been obvious to employ the shape of a truncated wedge since routine experimentation would be used to determine the optimum shape of the container because the function is the same and no showing of unexpected results was made. See the citations to *In re Rose*, and *In re Aller et al.*, above. In reference to claim 33, DE '1981 shows wall of the container 1 are provided with mini-funnels 3, but it is not clear if they narrow towards the containers inside, but it would have been obvious to make the mini-funnels narrow so that insects could not escape from the container once past the mini-funnels. In reference to claim 37 and 38, DE '1981 shows the catching part being formed from cylinders connected together as shown in Fig. 1, but does not show the catching part being formed from cuboids connected together. However, it would have been obvious to form the catching part from cuboids connected together since the function is the same. Also, see the rejection of claim 32, above.

5. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE '1981 as applied to claim 1 above, and further in view of WO 098218 A1.

6. The DE '1981 patent and the WO '218 patent show insect traps. DE '1981 has been discussed above and does not disclose a solution for trapping pests in the

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container. The WO '218 patent shows a solution made from water, light and heavy alcohols, detergent and an attracting agent such as a pheromone. In reference to claim 15, it would have been obvious to provide DE '1981 with a solution shown by WO '218 to attract insects to the trap. In reference to claim 16, WO '218 does not disclose the relative amounts of each ingredient as recited, but it would have been obvious to employ routine experimentation to determine the optimum amounts for each ingredient.

Allowable Subject Matter

7. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

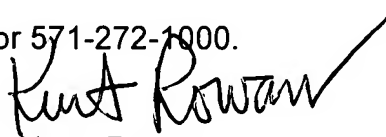
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Lenker, Harris, Forehand, Downey, Ernsberger, Ray, Beaton, and Jobin show other insect traps.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kurt Rowan
Primary Examiner
Art Unit 3643

KR